

1 DANA A. SUNTAG (State Bar #125127)
 2 JOSHUA J. STEVENS (State Bar # 238105)
 3 HERUM\CRABTREE\SUNTAG
 4 *A California Professional Corporation*
 5 5757 Pacific Avenue, Suite 222
 6 Stockton, California 95207
 7 Telephone: (209) 472-7700/Facsimile: (209) 472-7986
 8 dsuntag@herumcrabtree.com
 9 jstevens@herumcrabtree.com

6 Attorneys for All Defendants

7 Lori Rifkin, Esq. [S.B. #244081]
 8 HADSELL STORMER & RENICK LLP
 9 4300 Horton Street, #15
 10 Emeryville, CA 94608
 11 Telephone: (415) 685-3591/Facsimile: (626) 577-7079
 12 Email: lrifkin@hadsellstormer.com

11 Dan Stormer, Esq. [S.B. #101967]
 12 Brian Olney, Esq. [S.B. #298089]
 13 HADSELL STORMER & RENICK LLP
 14 128 N. Fair Oaks Ave.
 15 Pasadena, CA 91103
 16 Telephone: (626) 585-9600/Facsimile: (626) 577-7079
 17 Emails: dstormer@hadsellstormer.com
 18 bolney@hadsellstormer.com

15 Attorneys for Plaintiff

17 **UNITED STATES DISTRICT COURT**
 18 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

20 NATHANIEL SMITH,
 21 Plaintiff,
 22 vs.
 23 CITY OF STOCKTON, OFFICER
 24 PATRICK MAYER, OFFICER ROBIN
 25 HARRISON, AND OFFICER MICHAEL
 26 PEREZ IN THEIR INDIVIDUAL
 27 CAPACITIES; AND CHIEF OF POLICE
 28 ERIC JONES, IN HIS OFFICIAL AND
 29 INDIVIDUAL CAPACITIES,
 30 Defendants

Case No.: 2:15-CV-00363-KJM-AC
**STIPULATION AND ORDER TO STAY
 CASE PENDING APPEAL**
[No hearing required]

1 Plaintiff Nathaniel Smith and all Defendants (City of Stockton police
2 officers Patrick Mayer, Robin Harrison, and Michael Perez, Chief of Police Eric Jones,
3 and the City of Stockton) respectfully submit this stipulation to stay this case pending
4 Defendants' appeal.

5 RECITALS

6 A. On February 12, 2015, Plaintiff filed this lawsuit. His operative
7 pleading is his Second Amended Complaint (Doc. No. 38).

8 B. On July 21, 2017, all Defendants filed a motion for summary
9 judgment or partial summary judgment. (Doc. Nos. 74-80). The motion argued, among
10 other things, the individual defendants are entitled to qualified immunity and the City is
11 entitled to summary judgment on Plaintiff's *Monell* claim against it.

12 C. Plaintiff filed an opposition to the motion (Doc. No. 82) and
13 Defendants filed a reply. (Doc. No. 85).

14 D. On November 17, 2017, the Court held a hearing on the motion. At
15 the conclusion of the hearing, the Court took the motion under submission.

16 E. On August 13, 2018, the Court issued an order granting the motion
17 in part and denying it in part. As part of its order, the Court expressly denied qualified
18 immunity to the three Officers. (Doc. No. 95).

19 F. On September 12, 2018, all Defendants timely filed a notice of
20 appeal with the Ninth Circuit (Doc. No. 103). Defendants claim that *Mitchell v. Forsyth*,
21 472 U.S. 511, 530 (1985), and its progeny hold that a district court's denial of qualified
22 immunity is immediately appealable, and *Huskey v. City of San Jose*, 204 F.3d 893 (9th
23 Cir. 2000), and its progeny, allow a public entity to join an interlocutory appeal of the
24 denial of qualified immunity where the issues are "inextricably intertwined."

25 G. Counsel for Defendants contacted counsel for Plaintiff and stated
26 Defendants intended to file a motion to stay this case pending the appeal and asked to
27 meet and confer before filing the motion. Defendants assert the motion to stay would be
28

1 based on the rule that the filing of a notice of appeal “divests the district court of its
2 control over those aspects of the case involved in the appeal.” *Griggs v. Provident*
3 *Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (*per curiam*), quoted in *Plata v.*
4 *Schwarzenegger*, 2009 WL 799392, p. 10 (N.D. Ca. 2009); *Chuman v. Wright*, 960 F.2d
5 104 (9th Cir. 1992).

6 H. The parties met and conferred telephonically on September 21,
7 2018. Plaintiff’s counsel stated that Plaintiff does not agree that Defendants have the
8 right to appeal denial of summary judgment on the City’s *Monell* claim as an
9 interlocutory appeal, and that Plaintiff does not agree that this Court is divested of
10 jurisdiction of any issues in this case other than the qualified immunity issues.
11 Nonetheless, Plaintiff agreed to stipulate to stay the entire action pending appeal in
12 order to avoid the costs and inefficiencies of piecemeal litigation.

13 I. There is no trial date. By stipulated order issued on September 12,
14 2018, the Court rescheduled the final pretrial conference for December 21, 2018. (Doc.
15 No. 102).

16 STIPULATION

17 IT IS STIPULATED AND AGREED by the parties, through their counsel of
18 record, that this Court stay this case pending the Ninth Circuit’s ruling disposing of the
19 appeal.

20 Dated: September 27, 2018

HERUM\CRABTREE\SUNTAG

By: /s/ - Dana A. Suntag

Dana A. Suntag

Attorney for All Defendants

23 Dated: September 27, 2018

HADSELL STORMER & RENICK LLP

By: /s/ - Lori Rifkin

Lori Rifkin

Attorney for Plaintiff

ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Based on the foregoing stipulation, and good cause appearing therefor, IT IS ORDERED. This case is stayed pending a disposition of the appeal by the Ninth Circuit. The final pretrial conference is vacated.

DATED: October 3, 2018.


UNITED STATES DISTRICT JUDGE